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HOUSE BILL NO. 3095

Offered January 17, 2007

A BILL to amend and reenact §§ 16.1-278.16, 16.1-292, and 20-115 of the Code of Virginia, relating to the ability to purge civil contempt.

Patron—Lohr

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.16, 16.1-292, and 20-115 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court finds that the respondent has failed to perform or comply with such order, and personal or substitute service has been obtained, the court may issue a civil show cause summons or a capias pursuant to this section. The court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to 12 months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment for contempt. *Any order holding a respondent in civil contempt for failing to perform or comply with a support order shall expressly provide the manner by which he may purge himself of the contempt. The respondent shall have the burden of proof to show that he lacks the ability to purge himself of the contempt. If the respondent meets his burden, he shall not be held in civil contempt.* If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may proceed to impose sanctions on the employer pursuant to subdivision A 9 of § 20-79.3.

§ 16.1-292. Violation of court order by any person.

A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through 16.1-278.19, including a parent subject to an order issued pursuant to subdivision 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after notice and an opportunity for a hearing on the contempt except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten days for each offense. However, if the person violating the order was a juvenile at the time of the original act and is eighteen years of age or older when the court enters a disposition for violation of the order, the judge may order confinement in jail.

B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no event, however, shall such sentence be imposed for a period of more than twelve months. The sum or sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided. *Any order holding a party in civil contempt for failing to perform or comply with a support order shall expressly provide the manner by which he may purge himself of the contempt. The party shall have the burden of proof to show that he lacks the ability to purge himself of the contempt. If the party meets his*

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59 *burden, he shall not be held in civil contempt.*

60 C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may
61 take with respect to a child violating the terms and conditions of an order to those which the court
62 could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through
63 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive
64 the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 or
65 (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after
66 notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the
67 court's dispositional order which are committed outside the presence of the court.

68 D. In the event a child in need of services is found to have willfully and materially violated for a
69 second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives
70 specified in subdivision 9 of § 16.1-278.8 shall be available to the court.

71 E. In the event a child in need of supervision is found to have willfully and materially violated an
72 order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of
73 disposition:

74 1. Suspend the child's motor vehicle driver's license;

75 2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home
76 or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet
77 the child's needs, that all other treatment options in the community have been exhausted, and that secure
78 placement is necessary in order to meet the child's service needs, detained in a secure facility for a
79 period of time not to exceed ten consecutive days for violation of any order of the court arising out of
80 the same petition. The court shall state in its order for detention the basis for all findings required by
81 this section. When any child is detained in a secure facility pursuant to this section, the court shall
82 direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team
83 participating in such evaluation as promptly as possible to review its evaluation, develop further
84 treatment plans as may be appropriate and submit its report to the court for its determination as to
85 further treatment efforts either during or following the period the child is in secure detention. A juvenile
86 may only be detained pursuant to this section in a detention home or other secure facility in compliance
87 with standards established by the State Board. Any order issued pursuant to this subsection is a final
88 order and is appealable to the circuit court as provided by law.

89 F. Nothing in this section shall be construed to reclassify a child in need of services or in need of
90 supervision as a delinquent.

91 § 20-115. Commitment and sentence for failure to comply with order or decree.

92 Upon failure or refusal to give the recognizance provided for in § 20-114, or upon conviction of any
93 party for contempt of court in (i) failing or refusing to comply with any order or decree for support and
94 maintenance for a spouse or for a child or children or (ii) willfully failing or refusing to comply with
95 any order entered pursuant to § 20-103 or § 20-107.3, the court (i) may commit and sentence such party
96 to a local correctional facility as provided for in § 20-61 and (ii) may assign the party to a work release
97 program pursuant to § 53.1-131 or to perform public service work; in either event the assignment shall
98 be for a fixed or indeterminate period or until the further order of the court. However, in no event shall
99 commitment or work assignment be for more than twelve months. The sum or sums as provided for in
100 § 20-63, shall be paid as therein set forth, to be used for the support and maintenance of the spouse or
101 the child or children for whose benefit such order or decree provided. *Any order holding a party in civil*
102 *contempt for failing to perform or comply with a support order shall expressly provide the manner by*
103 *which he may purge himself of the contempt. The party shall have the burden of proof to show that he*
104 *lacks the ability to purge himself of the contempt. If the party meets his burden, he shall not be held in*
105 *civil contempt.*